

Annapolis Police Department



GENERAL ORDER

Number: E.3

**Issue Date: March
2002**

TO: All Personnel

SUBJECT: Traffic Offenses Involving Alcohol/Drugs

PURPOSE

The purpose of this General Order is to establish procedures for the arrest of individuals driving or attempting to drive a motor vehicle while intoxicated or under the influence of alcohol and/or drugs.

POLICY

It shall be the policy of the Annapolis Police Department to vigorously enforce all laws pertaining to the detection and apprehension of drivers operating under the influence of alcohol and/or drugs in accordance with the requirements of the Transportation Article.

I. Preliminary Breath Test

- A. Procedures for the Preliminary Breath Test device (PBT).
1. An officer may request a driver, stopped for suspicion of driving under influence (DUI) or driving while intoxicated (DWI), to submit to a PBT, after being advised of his/her rights as stated in MSP form 102, "Advisement of Rights for Preliminary Breath Test."
 2. The PBT must be administered prior to arrest and the results will be used only as a guide when determining whether the driver should be arrested for an alcohol offense. (The PBT does not replace, and is not part of, the conventional field sobriety maneuver or chemical test).

3. The results of the test will be given to the driver under the following circumstances:
 - a. When the driver is released without arrest.
 - b. Once the driver is arrested, but only after submission to, or refusal of, an evidentiary test of his/her blood alcohol concentration.
4. The results of the test may not be introduced in court as evidence or to support probable cause, but may be included in the reasonable grounds section of the MVA form DR-15. The results may also be used by the defense as evidence in a court action.

B. Preliminary Breath Test Procedures

1. Only the PBT equipment approved by the State Toxicologist, Office of the Chief Medical Examiner, and issued by the department, shall be used.
2. Only officers authorized by the toxicologist will be permitted to administer preliminary breath test.
3. The "Advice of Rights" form (MSP 102) will be distributed as follows:
 - a. Original - retained by arresting officer and forwarded to the Records Section.
 - b. Copy - defendant
 - c. Copy - Breath Test Supervisor.
4. The PBT's will be tested at least once a month by a PBT operator or the Breath Test Supervisor.
5. All tests will be recorded in the operator's PBT log.
6. The Breath Test Supervisor will conduct periodic inspections of the PBT operator's log.

II. Arrest Procedures

- A. In accordance with Sections 16-205.1 and 21-902 of the Transportation Article, the following procedures will be followed when making an arrest for alcohol/drug related traffic offense.
 1. Initial Contact
 - a. The officer will stop the operator at the earliest possible time after reasonable suspicion has been established.

- b. If possible, the officer will interview the operator at the scene of the stop, asking such things as how much the operator has had to drink, when the operator started and stopped drinking, if the operator has taken any drugs, etc. The officer is not required to read Miranda rights to the operator at this point.
- c. The officer will have the operator perform roadside sobriety maneuvers to establish additional probable cause for arrest.
- d. The arresting officer will read the defendant form DR-15 "Advice of Rights to a Chemical Test".
 - i). If the defendant agrees to submit to a chemical test for alcohol, the arresting officer has two (2) hours from the time of arrest to have the test administered.
 - ii). If the defendant refuses to submit to a chemical test for alcohol, the arresting officer must complete the DR-15A "Officer's Certification of Driver's Refusal to Submit to Chemical Test" and mail it to the Motor Vehicle Administration (MVA) within 72 hours.
- e. The advisement of "Miranda Rights" is not necessary until the situation becomes custodial and information beyond identification requirement is requested.
- f. The arresting officer will keep the defendant under observation at all times and will not allow the defendant to smoke, eat, drink or place any object in his/her mouth from the time of arrest until the defendant has submitted to the test.
- g. A defendant is entitled to request and to communicate with an attorney prior to taking the test. The attorney may contact the defendant at the test facility in order to speak to him/her or to administer a breath test of his/her own, with his/her own equipment.
 - i). All attorney-client contacts, prior to a Department administered breath test or a chemical test refusal, will be conducted in the presence of the arresting officer. Confidential conversation between attorney and defendant does not eliminate the requirement of continued visual contact by the arresting officer.
 - ii). The attorney is subject to a pat-down, and any containers will be checked for weapons or tools of escape.
 - iii). The attorney will only be permitted to administer a breath test when it will not substantially interfere with the timely and effective administration of the Department's testing

procedures, and will not negate the two hour limit mandated by State law.

- h. If the defendant requires any prescription medication the arresting officer shall proceed as follows:
 - i). Advise the defendant that if the taking of the medication causes the two hour time limit to expire, the action will be considered a test refusal and may result in the suspension of the defendant's license. The defendant may present medical evidence substantiating the need for medication at the MVA hearing to rebut this action.
 - ii). If the defendant still wants the medication, afford the opportunity to take the medication, wait at least 20 minutes and conduct the test. If the time limit expires, process the defendant for refusing the test. NOTE: Any medication taken will be included in the arresting officer's report to include type of medication and time taken.

2. Breath Test

- a. The breath test shall be administered in the designated area at Headquarters or another facility that has a functional breath testing instrument.
- b. Test equipment will only be operated by officers certified by the State Toxicologist. Operators shall conduct tests in accordance with procedures set forth by the State Toxicologist.
- c. The arresting officer or Breath Test Technician must remain with the defendant during the 20 minute waiting period prior to the test and witness the administration of the test.

3. Blood Test

- a. The blood test will only be used in the following circumstances:
 - i). The defendant is unconscious or otherwise incapable of refusing the breath test.
 - ii). Injuries to the defendant require removal of the subject to a medical facility.
 - iii). The defendant cannot physically take a breath test--mouth wired shut, etc.
 - iv). The equipment for administering the chemical breath test is not available.

- b. Blood kits can be obtained at Headquarters.
 - i). Only authorized blood collection kits will be used. Officers should check the expiration date prior to use. If the kit is outdated or if the exterior seal is broken, the kit will not be used. In either case, the officer will obtain a new kit.
 - ii). Blood samples will be collected only by qualified medical personnel. The arresting officer must witness the withdrawal of blood, have the qualified medical personnel sign the MSP form 34, and take custody of the containers.
 - iii). The arresting officer will follow the directions inside the test kit, complete the MSP form 34, and place it inside the mailing box of the test kit.
 - iv). The test kit will be mailed to the CTAU MSP Headquarters, Pikesville, MD 21208.
 - v). MSP test kit's are not to be used for administrative tests.

- 4. DWI Log
 - a. When a DWI arrest is made, the Breath Test Operator will log the test in the DWI log located in the Breath Test Room. Entry is required regardless of the type of test administered and in refusal cases.
 - b. Alcohol restriction violations will be recorded in the log ONLY when a chemical test is administered.

- B. Results of the breath test will be entered at the time the breath test is conducted. Test administrators will make entry in their personal log as well. Results of the blood test will be logged in upon receipt of the analysis from MSP by the Breath Test Supervisor.

- C. The defendant will be processed in accordance with **General Order C.5**.

- D. When placing charges, officers must remember that as a matter of law, it is the officer's opinion that is important and not necessarily the results of the breath test. Prior to administering the breath test, the officer should have already formed an opinion as to the level of intoxication.

- E. The officer will complete the citation in the following manner when charging defendants with violations of the DUI laws:
 - 1. Driving Under Influence of Alcohol - Circle the pre-printed charge on the citation "21-902 (a)(1), Driving Under Influence of Alcohol". Only one charge per citation.
 - 2. Driving Under Influence of Alcohol Per Se - Circle the pre-printed charge on the citation "21-902 (a)(2), Driving Under Influence Alcohol Per Se".

Only one charge per citation.

3. Driving While Impaired- Circle the pre-printed charge on the citation “21-902 (b), Driving While Impaired”. Only one charge per citation.

NOTE: Defendants submitting to a breath test and results being .08 or higher should be issued DUI Per Se 21-902 (a)(2) and DUI 21-902 (a)(1) citations (other charges are used in the event 21-902 (a)(2) is lost in court).

4. Driving Under Influence of a Drug, a Combination of Alcohol and a Drug, or a Controlled Dangerous Substance- Issue three separate citations. When alcohol and drugs are a factor, issue one citation for Driving Under the Influence Alcohol. Issue a second citation, checking the “T/A” block and circling the charge of “21-902 (c), Driving While Impaired by Drug(s) or Drug(s) and Alcohol”. Issue a third citation, circling the charge of “21-902 (d), Driving While Impaired by Controlled/Dangerous Substance”.

5. Driving While Impaired by Controlled Dangerous Substance- When CDS alone is a factor, a citation shall be issued with a charge of “21-902 (d), Driving While Impaired by Controlled Dangerous Substance”, unless otherwise instructed by a Drug Recognition Expert (DRE).

6. Driving in Violation of the Under 21 Alcohol Restriction- When a Maryland resident under 21 years of age takes a breath test with results of .02% or higher, a citation will be issued for violation of the alcohol restriction. Check the “T/A” block, write “16-113 (b), Driving a Motor Vehicle in violation of the Under 21 years Old Alcohol Restriction” in the charge block. (Note: Writing in 16-113 (b) will automatically be detected by MVA and will trigger a hearing to be set).

NOTE: Anyone under twenty-one (21) years of age automatically has an alcohol restriction (#9) imposed on their license. The restriction code will not appear on the driver's license or computer printout.

- F. When a subject is transported to the hospital and does not fall into the categories listed in Sections IV and V of this policy, the officer may issue citations at the hospital, when there is legal grounds to do so. This is the preferred method. When a blood test is requested probable cause must already exist. Refer to wording in the DR-15 Advice of Rights. Only in extraordinary cases should officers issue citations after a blood test is returned. If the defendant is transported to either a local hospital or to a regional shock trauma center, every effort should be made to respond to the hospital with a blood kit.

- G. If a subject is arrested for DUI/DWI the officer shall forward a memorandum to the

State's Attorney's Office. This form will indicate if the subject has been previously convicted of DUI. If the subject has been previously convicted of DUI, the block indicating "prior offender" should be checked "YES". This will indicate to the State's Attorney's Office that the department is requesting the defendant be considered for repeat offender prosecution (refer to Appendix A form 10/01). A copy of the defendant's driving record or a computer print-out of the record will be attached to the memorandum. **This form shall be completed for every arrest for DUI/DWI and Driving under the Influence of Drugs.**

III. Chemical Test for Drugs/Drug Recognition Experts

- A. Only officers designated and trained as Drug Recognition Experts (DREs) will be permitted to request blood samples from subjects under arrest for driving under the influence of drugs. The DRE will have chemical analyses performed on these blood samples. Officers can use the services of the Anne Arundel County Police Department or the Maryland State Police, having a DRE perform a series of psycho-physical and clinical tests on the arrested subject. From the evaluation, the DRE will be able to determine if the subject has ingested drugs and, if so what type. The DRE can then testify in court as to the results of the tests. DREs will not be called to an arrest location to determine if a subject should be arrested
- B. The following are criteria to request a DRE evaluation:
1. A suspect is arrested for driving under the influence of drugs;
 2. A suspect's blood alcohol content, as determined by the breath test unit, does not correspond with his/her level of intoxication; or
 3. A suspect's condition is not medically related.
- C. The breath test, if administered, will be conducted prior to any drug evaluation. There are no statutory time constraints within which the drug evaluation must be conducted. However, since the effects of drugs gradually wear off, it is recommended that the DRE conduct the evaluation soon after the arrest is made. If a defendant is obviously uncooperative and indicated a refusal to submit to any test, the DRE should not be contacted.

IV. Unconscious Subjects

When an operator of a motor vehicle is unconscious or otherwise incapable of refusing to take a chemical test for alcohol, and probable cause exists to make an arrest, the investigating officer will:

1. Obtain prompt medical attention for the individual and if necessary, arrange

for transportation to the nearest medical facility.

2. If a chemical test for alcohol will not jeopardize the individual's health or well-being, the officer will direct a qualified medical person to withdraw blood for a chemical test for alcohol to determine the alcohol content of the individual's blood. The consent form will be completed and word "unconscious" written where the defendant's signature would normally be placed.
3. If the individual regains consciousness or otherwise becomes capable of refusing the test prior to the withdraw of blood, the investigating officer will proceed with the DR-15 Rights.

V. Fatal Accidents/Life Threatening Injury Accidents

- A. Transportation Article, Section 16-205.1 (c) (1) and (3) states:
“If a person is involved in a motor vehicle accident that results in the death of, or a life threatening injury to, another person and the person is detained by an officer who has reasonable grounds to believe that the person has been driving or attempting to drive while intoxicated or while under the influence of alcohol, while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while under the influence of a controlled dangerous substance, or in violation of Section 16-813 of this title, the person shall be required to submit to a chemical test, as directed by the officer”. Any medical personnel who perform any test required by this section are not liable for any civil damages as the result of any act or omission related to such test, not amounting to gross negligence.
- B. The officer will complete the DR-15 unless the defendant is unconscious. When involved in a fatal accident and there are reasonable grounds to believe alcohol use exists, the detained person is required by law to submit to a chemical test as directed by the officer. This is explained in the DR-15.
- C. If the breath test is selected, the officer will follow the procedures previously set forth in this General Order. Refusal of the detained person to cooperate in taking a breath test will require transport to the appropriate hospital for a blood test. The defendant has no right to refuse the blood test, if necessary, force can be used to obtain a blood sample. Officers shall use the minimum amount of force necessary to lawfully collect a blood sample.
- D. If the blood test is selected, medical personnel will withdraw blood using a blood kit approved by the State Toxicologist. The officer will witness the withdrawal of blood and immediately take possession of the containers.
- E. The State’s Attorney’s Office will be notified by the reporting officer in all alcohol or drug related fatal motor vehicle accidents.

1. Contact will be accomplished as soon as possible when the operator is a Maryland resident.
2. When the operator is not a Maryland resident, the on-call Assistant State's Attorney will be contacted immediately and will determine what charges are to be placed.
3. The results of the State's Attorney contact, including the identity of the attorney, will be noted within the accident report.
4. On alcohol-related or anticipated alcohol-related fatal accidents, do not charge the defendant until advised to do so by the State's Attorney's Office. The issuance of non-incarcerable traffic citations may prevent the prosecution of the more serious traffic offense.
5. When charges of homicide by motor vehicle while intoxicated or manslaughter by motor vehicle are placed, the defendant must be taken before a commissioner.

VI. Deceased Persons

- A. When the operator of a motor vehicle dies as a result of injuries sustained in an automobile accident, the Deputy Medical Examiner will take charge of the body.
- B. The Deputy Medical Examiner will, as a matter of policy, take a blood sample from the deceased and have it analyzed for blood alcohol content by the State Toxicologist Laboratory. The results of the blood analysis will be made available to the investigating officer by obtaining a copy of the Medical Examiners report.

VII. Release of a Defendant

The releasing officer shall ensure the defendant has copies of the citation(s) issued, MSP 33, DR-15, and DR-15A if applicable.

1. In situations where the defendant does not furnish satisfactory evidence of identity and the officer has reasonable grounds to believe that the defendant may not be the person he or she claims to be, the officer shall take the defendant before the court commissioner for a pretrial release determination. The commissioner should be informed of the known facts as well as the grounds for the officer's doubts concerning the defendant's identity.
2. Defendants will not sign citations until sober enough to understand what they are charged with, and will not be released in an impaired condition, unless they are released to a sober adult. Once the defendant has signed the citation(s), the officer has no authority to detain the person.

3. Juvenile defendants must be released to a parent or guardian.

VIII. Defendant's Vehicle

- A. When the arrest is made, the arresting officer will search the defendant's vehicle incident to arrest.
- B. If the defendant is alone and stops the vehicle in an unsafe or illegal location or the vehicle is impeding or will impede traffic, the officer may move the vehicle, upon receiving permission from the defendant, to a nearby lawful parking area. The officer will lock the vehicle and take the keys. If permission to move the vehicle is refused, the defendant fails to respond, or the officer chooses not to operate the vehicle (for health or safety reasons), the vehicle will be towed in accordance with established towing procedures. If the defendant stops the vehicle in a safe and legal location, the officer will lock the vehicle and leave it at the scene. The keys may be turned over to a sober adult (possessing a valid driver's license) who responds to take custody of the vehicle. The final decision regarding whether or not to tow the vehicle rests with the arresting officer.
- C. If the vehicle is occupied by passengers when the defendant is taken into custody, the officer may release the vehicle to them under the following conditions:
 1. The defendant has an ownership interest in the vehicle and grants permission to a sober, valid licensed adult (18 years or older) passenger to operate the vehicle.
 2. One of the passengers has an ownership interest in the vehicle and has a valid license and is sober or the person grants permission to another valid licensed and sober operator to operate the vehicle. If the passengers do not meet the above criteria, the vehicle and keys will not be released. The vehicle will then be towed or parked and locked and the officer will retain the keys. If the vehicle is not towed the keys will be placed with the defendant's property.
 3. The officer should take reasonable steps to arrange alternative transportation for the passenger(s). A back-up unit may be used since the arresting officer's primary responsibility is processing the defendant within the specified time limit. Factors such as time of day, adverse weather conditions, location of arrest, age, sex, and the physical condition of the passenger(s) should be used as guidelines when weighing the alternatives.

IX. Required Forms

- A. MSP Alcoholic Influence Report
- B. Preliminary Breath Test Advisement of Rights (MSP 102)
- C. Advice of Rights to a Chemical Test (DR-15)
- D. Officer's Certification of Driver's Refusal to Submit to a Chemical Test (DR-15A)

- E. MSP 33 Results of chemical test
- F. MSP 34 Blood kit instructions, if blood is taken
- G. Repeat offender form

X. Checklist

Summation of forms required in DWI cases:

1. MVA DR-15 (Advice of Rights to Chemical Test) dated 7/01
2. MVA DR-15A (Officer’s Certification and Order of Suspension) dated 9/01
3. MVA DR-102 (Certification of Police Officer, Test Result of 0.04% or more- Commercial Motor Vehicle if applicable)
4. MVA DR-103 (Certification of Police Officer, Violation of alcohol Restriction if applicable)
5. MSP 33- results of test (breath test).
6. MSP 34 (blood test)
7. Instrument certification letter
8. Approval letter for simulation solution
9. MSP 102 (PBT Advisement of Rights, if PBT is used)
10. Alcohol Influence Report
11. Maryland Uniform Complaint and Citation
12. Certified copy of defendant’s driving record
13. Miranda Warnings (optional)

Joseph S. Johnson
Chief of Police

References
1. Accreditation Standards 1.2.3, 1.2.7, 42.1.5, 61.1.2, 61.1.3, 61.1.4, 61.1.5, 61.1.11, 61.2.1 2. General Orders C.5 Persons in Police Custody/Holding Facility 3. Maryland Transportation Article, Motor Vehicle Administration “Advice of Rights to a Chemical Test”

Revision: This General Order replaces General Order E.3 Traffic Offenses Involving Alcohol/Drugs dated March 2000

ARREST FOR D.U.I.

	Results .00	Results .01 - .05	Results .06 - .07	Results .08 or greater	Refused test	Blood test
DR 15	YES	YES	YES	YES	YES	YES
DR 15A	NO	NO	NO	YES	YES	Yes only if results are .08 or above
Alcohol Influence Report	YES	YES	YES	YES	YES	YES
SECTION 21-902	Suspected CDS*	Suspected CDS*	YES*	YES*	YES*	YES*

*Drug Recognition Expert should be requested/ Blood tests for suspected CDS refer to section 16-205.1(i) of the Transportation Article of the Annotated Code of Maryland

